Supreme Court, U.S.
FILED
SEP 13 1982
ALEXANDER L. STEVAS,
CLERK

82-456

In the Supreme Court of the United States
OCTOBER TERM, 1982

CHRIS GREENFIELD, Petitioner

v.

STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

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QUESTION PRESENTED

Whether evidence must be suppressed when seized pursuant to the execution of a search warrant which is in all respects properly issued except that the magistrate issuing it fails to sign the search warrant.

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Constitutional Provision Involved	2
Statement of the Case	3
Reasons For Granting The Writ	4
Conclusion	7
Appendix (Opinion of the Court of Appeal)	9

TABLE OF AUTHORITIES

Cases:

Bowyer v. Superior Court
37 Cal.App.3d 15 (1974) 5, 6

Michigan v. Tyler
436 U.S. 499 (1978) 7

People v. Superior Court (Robinson)
75 Cal.App.3d 73 (1977) 6

Constitution and Statutes:

California Health and Safety Code
§11350 3

California Penal Code
§1523 4
§1526(b) 5
§1528(a) 5
§1538.5 ..... 3, 7
§12021 3

Page

Constitution and Statutes - Continued:

Constitution of The United States,
Fourth Amendment 2

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The petitioner CHRIS GREENFIELD, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of California, First Appellate District, filed May 17, 1982.

OPINION BELOW

The opinion of the District Court of Appeal for the State of California is included in the Appendix to the petition.

JURISDICTION

The District Court of Appeal opinion was

filed on May 17, 1982. Hearing was sought in the California Supreme Court and was denied on July 14, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

QUESTION PRESENTED

Whether evidence must be suppressed when seized pursuant to the execution of a search warrant which is in all respects properly issued except that the magistrate issuing it fails to sign the search warrant.

CONSTITUTIONAL PROVISION INVOLVED

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Judgments of conviction were entered upon pleas of guilty of the Superior Court in and for the County of San Francisco, California to one count of violating Penal Code section 12021 (possession by Felon of a firearm) and one count of violating Health and Safety Code section 11350 (possession of cocaine), counts two and three, respectively, of a five count information. Greenfield was sentenced to serve four years in state prison.

Greenfield is presently at liberty on bail pending appeal.

Prior to the entry of the pleas of guilty, Greenfield moved, pursuant to California Penal Code section 1538.5, to traverse a search warrant and to suppress the evidence derived from the execution of that search warrant. The motion was denied. The only issue raised herein is that search and seizure issue and it arises from the failure of the magistrate to sign the search warrant after having read and approved of it.

The proposed search warrant and supporting affidavit were presented to a Municipal Court Judge. The Judge read the affidavit and the proposed search warrant,

approved of it and decided to issue it and believed he did issue it. However, neither he nor anyone else ever signed the purported search warrant. The purported search warrant remains to this day unsigned.

The purported search warrant was executed on October 17, 1979. No one was in the house when the agents were there. The search yielded the weapon and cocaine upon which were based counts two and three of the information which are at issue in this appeal.

REASONS FOR GRANTING THE WRIT

The Penal Code expressly requires that a search warrant be signed by the issuing magistrate. A search warrant is by definition a signed order:

> "Search warrant defined. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate."
>
> Penal Code section 1523 (emphasis added).

The statutory procedure for the issuance of search warrants makes it mandatory that the magistrate sign the search warrant

upon a finding of probable cause:

> "If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant signed by him, with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property or things in his custody subject to order of the court as provided by Section 1536."
>
> Penal Code section 1528(a) (emphasis added).

Bowyer vs. Superior Court, 37 Cal.App. 3d 15 (1974), involving a telephonic search warrant [P.C. sec. 1526(b), 1528(b)], held that failure to sign the magistrate's name to the copy of the authorized search warrant invalidated the search. The day after the search, the magistrate signed the warrant, which he "dated nunc pro tunc as of April 22 ..."

The court held that the search was illegal and that the evidence must be suppressed:

> "Section 1523 defines a search warrant as "an order in writing, ... signed by a magistrate, directed to a peace officer,

> commanding ... The same requirement is imported by other sections which specify a form for the warrant which is to be signed (Section 1529) ... both sections thus indicate that the officer is authorized to act pursuant to the warrant only after it exists in writing (sec. 1523, 1528) and (1) it has been 'signed' by the magistrate."
>
> Bowyer v. Superior Court 37 Cal.App. 3d 15 (1974)

People vs. Superior Court (Robinson), 75 Cal.App.3d 76 (1977), relied upon below by the Court of Appeal, should not be controlling. In Robinson, it was reasoned that evidence seized during the execution of an unsigned warrant need not be suppressed, even though the warrant was invalid, because to do so would not serve to deter illegal police conduct. In this regard, Robinson clearly is wrong. Failure to suppress in these situations would do nothing except to encourage police and judicial conduct which is illegal, or, at least, reckless. If unsigned warrants are permitted to elude the exclusionary rule, then the police and the judiciary will have a diminished incentive to see to it that proper signatures are obtained and a

search warrant would never be necessary so long as the magistrate would testify at the suppression hearing that he orally had authorized the search after concluding that probable cause existed. The sorting out, on appeal, of which unsigned warrants were innocently obtained and which were not is a process which is inadequate to obviate the likelihood that we would witness a rise in the number of unsigned warrants some which (perhaps many of which) ought not to be condoned. This is precisely the point of Penal Code section 1538 which eliminates these dangerous possibilities by requiring the magistrate to actually sign the warrant. Furthermore, the major purpose of a warrant is to provide the property owner with sufficient information to reassure him of the legality of entry. Michigan v. Tyler 436 U.S. 499 (1978) An unsigned "warrant" would do nothing more than to raise the property owner's suspicions of the possible illegality of the entry.

CONCLUSION

The writ should issue.

Respectfully submitted,

JERROLD M. LADAR

JERROLD M. LADAR
Counsel for Petitioner

September 13, 1982

APPENDIX

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
CHRIS GREENFIELD,
Defendant and Appellant.

1 Crim. No. 22889

(Sup. Ct. No. 103255)

THE COURT:*

Chris Greenfield appeals (Pen. Code, §1538.5, subd. (m)) after having pled guilty to possession of a concealable firearm by an ex-felon (Pen. Code, §12021, subd. (a)) and possession of cocaine (Health & Saf. Code, §11350). He argues that the court erred in denying his motion to suppress evidence. We affirm.

The sole question is whether, given a search and seizure pursuant to a warrant, which was correct in all respects save that the magistrate inadvertently failed to sign

* Before Rouse, Acting P.J., Miller, J., and Smith, J.

the warrant before the search, the evidence seized must be suppressed. By stipulation and concession, appellant allows that the magistrate did read and sign the affidavit before issuing the warrant, that the magistrate intended to issue the warrant, and in fact believed he had properly issued the warrant. There is no evidence to suggest, and appellant does not contend, that the police officers were aware of the clerical error before they concluded the search, or that anyone upon the premises challenged the warrant at the time of the search.

The question has arisen before, and it has been resolved adversely to appellant's position. (Sternberg v. Superior Court (1974) 41 Cal.App.3d 281; People v. Superior Court (Robinson) (1977) 75 Cal.App.3d 76, 79-80.) These cases hold that under such circumstances the warrant is valid, because the procedures employed fully comply with the applicable constitutional requirements (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13); and that even if the warrant is deemed invalid, since there was absolutely no official misconduct, it would serve no purpose of the exclusionary rule to suppress the evidence and therefore the exclusionary rule should not be employed.

Appellant relies on the inapposite case of Bowyer v. Superior Court (1974) 37 Cal. App.3d 151. Bowyer held invalid, and suppressed the evidence resulting from, a "telephonic" search warrant which was not put into writing until after the search. Such a warrant would also have been found invalid under the analysis of Sternberg and Robinson. (Cf. Sternberg, supra, 41 Cal.App.3d at pp. 287, fn. 3, 290-291; Robinson, supra, 75 Cal.App.3d at p. 80.) The difference is that here there was a written warrant antecedent to, and controlling, the search.

Appellant correctly notes that Penal Code sections 1523 and 1528, subdivision (a), require that the written warrant must also be "signed." But we need not confront his argument, based on dicta in Bowyer, that every statutory requirement must be fully met before the warrant can be deemed valid. (See 37 Cal.App.3d at p. 164; compare Sternberg and Robinson, we hold that whether or not the warrant was "valid," under the facts present here the exclusionary rule should not be employed. (Cf. Pen. Code, §1538.5, subd. (a)(2) [which suggests the same analysis].)

There was no error in this case.
The judgment is affirmed.

I hereby certify that on this 13th day of September, 1982, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid to:

George Deukmajian
Attorney General
State of California
350 McAllister Ave.
San Francisco, CA 94102,

Counsel for the State of California. I further certify that all parties required to be served have been served.

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